

UNITED STATES OF AMERICA 81 ferc ¶ 61, 322
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
Vicky A. Bailey, William L. Massey,
Linda Breathitt, and Curt Hebert, Jr.

Pacific Gas and Electric Company,)	Docket Nos. EC96-19-007
San Diego Gas & Electric Company and)	and ER96-1663-008
Southern California Edison Company)	
)	
Southern California Edison Company)	Docket No. ER98-441-000
)	
Pacific Gas and Electric Company)	Docket No. ER98-495-000
)	
San Diego Gas & Electric Company)	Docket No. ER98-496-000

ORDER ACCEPTING FOR FILING AND SUSPENDING PROPOSED
MUST-RUN AGREEMENTS, AND ESTABLISHING HEARING PROCEDURES

(Issued December 17, 1997)

The California Independent System Operator (ISO) filed proposed amendments to its pro forma must-run agreements, and Southern California Edison Company (SoCal Edison), Pacific Gas and Electric Company (PG&E) and San Diego Gas & Electric Company (SDG&E) (collectively, the Companies) each filed proposed, unexecuted must-run agreements.

As discussed below, we will accept the Companies' proposed must-run agreements for filing, suspend them for a nominal period and establish hearing procedures in the respective dockets. We will not accept the ISO's proposed modifications to its pro forma must-run agreements for filing; rather, we will treat the ISO's submittal as a counterproposal to the Companies' proposed must-run agreements in the hearings established herein.

Background

Under the California electric restructuring, power scheduled by transmission customers will be transmitted over facilities controlled by the ISO pursuant to the ISO's open access transmission tariff. In order to meet its responsibility of maintaining system reliability, the ISO will enter into reliability must-run agreements with generators that operate must-run units, which will give the ISO the right to designate certain generating units as must-run units.

By order issued on October 30, 1997, 1/ the Commission, among other things, accepted for filing the ISO's pro forma must-run agreements that were originally filed on March 31, 1997, by the Trustee for the ISO 1/ and revised on August 15, 1997, by the ISO.

The Filings

On October 31, 1997, the ISO filed proposed amendments to the pro forma must-run agreements contained in Appendix G of the ISO Tariff originally filed on March 31, 1997, and revised on August 15, 1997. The ISO states that its proposed amendments do not reflect the modifications required in the October 30 Order. It states that the proposed pro forma agreements have been subject to review by many potential signatories and non-signatory stakeholders in the two months preceding its October 31, 1997 filing. The ISO requests that its proposed amended pro forma must-run agreements be set for hearing with the Companies' proposed must-run agreements.

1/ Pacific Gas and Electric Company, et al., 81 FERC ¶ 61,122 (1997) (October 30 Order).

2/ The ISO had not yet been formed, and the Trustee acted on behalf of the ISO until the ISO was formed.

PG&E, SDG&E and SoCal Edison each filed unexecuted, facility-specific must-run agreements. 1/ The Companies state that their proposed facility-specific agreements largely track the ISO's pro forma must-run agreements filed on March 31, 1997, as revised on August 15, 1997, with each company making changes specific to its own circumstances. Each of the Companies requests an effective date of January 1, 1998, the date they anticipate ISO operations to commence.

3/ Only the Companies have filed proposed facility-specific must-run agreements as of this date.

On October 31, 1997, in Docket No. EC98-14-000, SoCal Edison, which states that it is in the process of divesting itself of all of its must-run generation facilities, filed an application for authorization to assign its must-run agreements to the purchasers of its generating stations at which reliability must-run units are located. SoCal Edison's application in Docket No. EC98-14-000 will be addressed in a future order.

The Companies explain that the intent of the WEPEX stakeholder process was that the ISO would file a pro forma must-run agreement that would be a model for facility-specific must-run agreements and that the owners of the must-run facilities would negotiate the terms of the individual, facility-specific must-run agreements with the ISO before those facility-specific agreements were filed with the Commission. The ISO and the Companies state that they have been negotiating the terms of the pro forma must-run agreements but have been unable to resolve numerous issues. Thus, each of the Companies filed unexecuted, facility-specific must-run agreements. The Companies state that their negotiations with the ISO concerning the terms of the individual must-run agreements are ongoing, and when a settlement is reached, each company intends to reflect that in a subsequent filing. 1/

Notice of Filings and Pleadings

Notice of the ISO's and the Companies' filings was published in the Federal Register, 1/ with motions to intervene or protests due on or before November 21, 1997. See Appendix A for a list of the notices of intervention and motions to intervene.

Protests were filed raising numerous issues, including: the company-specific, cost-based rates; the selection of must-run units; the additional modifications proposed by the Companies and the ISO; the lack of sufficient modifications to implement the October 30 Order; whether the ISO's filing should be the basis for must-run service; whether the must-run contracts of non-jurisdictional utilities require Commission approval; and whether the filings provide sufficient information to assess market power.

On December 8, 1997, SoCal Edison filed a response. It argues that its deviations from the ISO's pro forma must-run agreements are reasonable and that the ISO's proposals are inequitable. It also argues that intervenors' request to suspend Agreement B until after a hearing and Commission order has already been rejected by the Commission in the October 30 Order, and it requests that the hearing on its filing be limited to (1) the differences between its must-run agreements and the ISO's pro forma must-run agreements and (2) the specific rate and performance terms in its must-run agreements' rate schedules.

4/ See October 31, 1997 Transmittal Letters of SoCal Edison at pp. 2-3; PG&E at p.1; SDG&E at p.1.

5/ 62 Fed. Reg. 60,895 (1997).

DiscussionProcedural Matters

Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (1997), the notices of intervention and the timely, unopposed motions to intervene of the persons listed in Appendix A serve to make them parties to this proceeding.

Due to the early stage of these proceedings and the absence of any undue delay or prejudice to any parties, we find good cause to grant Marron, Reid and Sheehy's, PG&E Energy Services Corporation's, Utility Reform Network and Utility Consumers Action Network's and Independent Energy Producers Associations's late motions to intervene.

The Proposed Must-Run Agreements

With respect to the ISO's proposed amendments to the pro forma must-run agreements, we believe that, in view of the Companies' filings of facility-specific must-run agreements, it would not result in an efficient allocation of resources to accept those proposed amendments and hold a separate hearing on them. Rather, it would be appropriate to address the ISO's proposed amendments in the context of the hearings we order below concerning each of the Companies' facility-specific must-run agreements. ^{1/} Moreover, the ISO has requested that its proposed amendments be considered at hearing with the Companies' proposed agreements, and it has intervened in each of the dockets involving the Companies' proposed must-run agreements. Accordingly, we will reject the ISO's proposed amendments as a rate filing, but we do so without prejudice to the ISO raising the issues reflected in its proposed amendments in the hearings we are ordering below concerning the Companies' proposed must-run agreements.

In view of the determination above, we deem the ISO's pro forma must-run agreements that were accepted for filing in the October 30 Order, but which have not taken effect, to have been superseded by the Companies' proposed must-run agreements. Thus,

^{6/} The entities that own and/or control the must-run units (at this juncture, the Companies) will be the sellers under the must-run agreements. Thus, the ISO's proposal represents the buyer's counter proposal to the sellers' offered agreements.

only the Companies' proposed must-run agreements, accepted for filing below, may serve as the filed rates for must-run service to the ISO pending subsequent Commission orders.

The Cogeneration Association of California and the Energy Producers and Users Coaliton (CAC and EPUC) argue that Agreement B could cause predatory pricing and seek interim relief pending the completion of a hearing and subsequent Commission order. However, in accepting the proposed must-run agreements, including Agreement B, on an interim basis, the October 30 Order expressly disagreed with claims that Agreement B will cause predatory pricing. 1/ Therefore, we will deny CAC and EPUC's request to set that issue for hearing and for interim relief.

Our preliminary analysis of PG&E's, SDG&E's and SoCal Edison's proposed must-run agreements indicates that the proposed rates have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the Companies' proposed must-run agreements for filing, suspend them for a nominal period, to become effective on the date that ISO operations commence, subject to refund, and set them for hearing.

We note that there may be issues that are common to all three of the Companies' filings (e.g., terms and conditions) while other issues will be company-specific (e.g., rate issues).

Moreover, today, in separate orders, the Commission is also setting for hearing several other filings by the ISO, the California Power Exchange Corporation, and the Companies. In view of that, we believe that the establishment of a procedural framework for the hearings ordered herein, e.g., consolidations of proceedings or severances of issues, is best left to the discretion of the Chief Administrative Law Judge in the first instance. 1/

The Commission orders:

(A) The untimely motions to intervene are hereby granted.

7/ Id., 81 FERC at _____, slip op. at 259.

8/ See, e.g., Long Sault, Inc., et al., 76 FERC ¶ 61,313 (1996) (granting Chief Administrative Law Judge discretion in the first instance concerning consolidations and severances of proceedings where the Commission was setting for hearing open access pro forma compliance tariffs involving 28 public utilities).

(B) The ISO's proposed amendments to its pro forma must-run agreements are hereby rejected, without prejudice, as discussed in the body of this order.

(C) SoCal Edison's, PG&E's and SDG&E's proposed must-run agreements are hereby accepted for filing and suspended for a nominal period, to become effective on the date ISO operations commence, subject to refund, as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), public hearings shall be held concerning the justness and reasonableness of SoCal Edison's, PG&E's and SDG&E's proposed must-run agreements, as discussed in the body of this order.

(E) The Chief Administrative Law Judge, shall convene a prehearing conference to be held within approximately thirty (30) days after the issuance of this order, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of determining the appropriate course of these proceedings and establishing procedural dates as appropriate, and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

(F) SoCal Edison, PG&E and SDG&E are hereby informed of the rate schedule designations shown on Appendix B of this order.

By the Commission.

(S E A L)

Lois D. Cashell,
Secretary.

APPENDIX A

Notices of intervention and motions to intervene 1/

Interventions in Docket Nos. EC96-19-007 and ER96-1663-008

Northern California Power Agency; Cities of Redding and Santa Clara, California and M-S-R Public Power Agency; Modesto Irrigation District; Transmission Agency of Northern California; Metropolitan Water District; Los Angeles Department of Water and Power; Pacific Gas and Electric Company; Electric Clearinghouse, Inc.; Public Utilities Commission of the State of California; Energy Producers and Users Coalition; Cogeneration Association of California; Amoco Production Company and Amoco Energy Trading Corporation; Texaco Natural Gas Inc.; California Department of Water; Southern California Edison Company; Imperial Irrigation District; Turlock Irrigation District; Houston Industries Power Generation Inc.; Sacramento Municipal Utility District; New York Mercantile Exchange; Cities of Anaheim, Riverside and Colton, California, and Cities of Azusa and Banning, California; Western Area Power Administration; the Member Systems of the New York Power Pool; and NorAm Energy Services, Inc. Late interventions: PG&E Energy Services Corporation; and The Utility Reform Network and Utility Consumers Action Network.

Interventions in Docket No. ER98-441-000

Northern California Power Agency; Modesto Irrigation District; Transmission Agency of Northern California;

9/ All of the listed motions to intervene are timely and unopposed unless otherwise indicated.

Metropolitan Water District; Los Angeles Department of Water and Power; Pacific Gas and Electric Company; Electric Clearinghouse, Inc.; California Independent System Operator; Public Utilities Commission of the State of California; Energy Producers and Users Coalition; Cogeneration Association of California; Amoco Production Company and Amoco Energy Trading Corporation; Texaco Natural Gas Inc.; California Department of Water; Imperial Irrigation District; Turlock Irrigation District; Houston Industries Power Generation Inc.; Sacramento Municipal Utility District; New York Mercantile Exchange; Cities of Anaheim, Riverside and Colton, California, and Cities of Azusa and Banning, California; Western Area Power Administration; NorAm Energy Services, Inc.; San Diego Gas & Electric Company; M-S-R Public Power Agency; City of Redding, California; California Manufacturers Association and California Large Energy Consumers Association; and City of Santa Clara, California. Late interventions: Marron, Reid and Sheehy; PG&E Energy Services Corporation; The Utility Reform Network and Utility Consumers Action Network; and Independent Energy Producers Association.

Interventions in Docket No. ER98-495-000

Northern California Power Agency; Modesto Irrigation District; Transmission Agency of Northern California; Metropolitan Water District; Los Angeles Department of Water and Power; Electric Clearinghouse, Inc.; California Independent System Operator; Public Utilities Commission of the State of California; Energy Producers and Users Coalition; Cogeneration Association of California; Amoco Production Company and Amoco Energy Trading Corporation; Texaco Natural Gas Inc.; California Department of Water; Imperial Irrigation District; Turlock Irrigation District; Houston Industries Power Generation Inc.; Sacramento Municipal Utility District; New York Mercantile Exchange; Cities of Anaheim, Riverside and Colton, California, and Cities of Azusa and Banning, California; Western Area Power Administration; NorAm Energy Services, Inc.; San Diego Gas & Electric Company; Southern California Edison Company; M-S-R Public Power Agency; City of Redding, California; City of Santa Clara, California; California Manufacturers Association and California Large Energy Consumers Association; and City and County of San Francisco. Late interventions: Marron, Reid and Sheehy; PG&E Energy Services Corporation; The Utility Reform Network and Utility Consumers Action Network; and Independent Energy Producers Association.

Interventions in Docket No. ER98-496-000

Northern California Power Agency; Modesto Irrigation District; Transmission Agency of Northern California;

Metropolitan Water District; Los Angeles Department of Water and Power; Electric Clearinghouse, Inc.; Pacific Gas and Electric Company; California Independent System Operator; Public Utilities Commission of the State of California; Energy Producers and Users Coalition; Cogeneration Association of California; Amoco Production Company and Amoco Energy Trading Corporation; Texaco Natural Gas Inc.; California Department of Water; Imperial Irrigation District; Turlock Irrigation District; Houston Industries Power Generation Inc.; Sacramento Municipal Utility District; New York Mercantile Exchange; Cities of Anaheim, Riverside and Colton, California, and Cities of Azusa and Banning, California; Western Area Power Administration; NorAm Energy Services, Inc.; Southern California Edison Company; M-S-R Public Power Agency; City of Redding, California; California Manufacturers Association and California Large Energy Consumers Association; and City of Santa Clara, California. Late interventions: Marron, Reid and Sheehy; PG&E Energy Services Corporation; The Utility Reform Network and Utility Consumers Action Network; and Independent Energy Producers Association.

APPENDIX B

California Independent System Operator Corporation

Rate Schedule Designations

Effective Date: January 1, 1998

Pacific Gas and Electric Company

Docket No. ER98-495-000

<u>Rate</u> <u>Schedule</u> <u>FERC No.</u>	<u>Supplement</u> <u>No.</u>	<u>Secondary</u> <u>Supplement</u> <u>No.*</u>	<u>Description</u>	<u>Plant or Unit Name</u> <u>(If Applicable)</u>
8			Master Must-run Agreement	
8	1		Must-run Agreement "A"	
8	1	1	Schedules under Must-run "A"	Contra Costa
8	1	2	Schedules under Must-run "A"	Humboldt Bay
8	1	3	Schedules under Must-run "A"	Hunters Point
8	1	4	Schedules under Must-run "A"	Moss Landing
8	1	5	Schedules under Must-run "A"	Oakland
8	1	6	Schedules under Must-run "A"	Pittsburg
8	1	7	Schedules under Must-run "A"	Potrero
8	1	8	Schedules under Must-run "A"	Helms Pumped Storage
8	1	9	Schedules under Must-run "A"	Kings River Watershed
8	1	10	Schedules under Must-run "A"	Merced River Watershed
8	1	11	Schedules under Must-run "A"	Eel River Watershed
8	1	12	Schedules under Must-run "A"	San Joaquin River Watershed
8	1	13	Schedules under Must-run "A"	Geysers (Main Units)
8	1	14	Schedules under Must-run "A"	Geysers (Units 13 and 16)
8	2		Must-run Agreement "B"	
8	2	1	Schedules under Must-run "B"	Contra Costa
8	2	2	Schedules under Must-run "B"	Humboldt Bay
8	2	3	Schedules under Must-run "B"	Hunters Point
8	2	4	Schedules under Must-run "B"	Moss Landing
8	2	5	Schedules under Must-run "B"	Oakland
8	2	6	Schedules under Must-run "B"	Pittsburg
8	2	7	Schedules under Must-run "B"	Potrero
8	2	8	Schedules under Must-run "B"	Geysers (Main Units)
8	2	9	Schedules under Must-run "B"	Geysers (Units 13 and 16)
8	3		Must-run Agreement "C"	
8	3	1	Schedules under Must-run "C"	Contra Costa

California Independent System Operator Corporation
Rate Schedule Designations
 Effective Date: January 1, 1998

Pacific Gas and Electric Company
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Rate Schedule <u>FERC No.</u>	Supplement <u>No.</u>	Secondary Supplement <u>No.*</u>	<u>Description</u>	Plant or Unit Name <u>(If Applicable)</u>
8	3	2	Schedules under Must-run "C"	Humboldt Bay
8	3	3	Schedules under Must-run "C"	Hunters Point
8	3	4	Schedules under Must-run "C"	Moss Landing
8	3	5	Schedules under Must-run "C"	Oakland
8	3	6	Schedules under Must-run "C"	Pittsburg
8	3	7	Schedules under Must-run "C"	Potrero
8	3	8	Schedules under Must-run "C"	Geysers (Main Units)
8	3	9	Schedules under Must-run "C"	Geysers (Units 13 and 16)

San Diego Gas & Electric Company
Docket No. ER98-496-000

Rate Schedule <u>FERC No.</u>	Supplement <u>No.</u>	Secondary Supplement <u>No.*</u>	<u>Description</u>	Plant or Unit Name <u>(If Applicable)</u>
9			Master Must-run Agreement	
9	1		Must-run Agreement "A"	
9	1	1	Schedules under Must-run "A"	Encina
9	1	2	Schedules under Must-run "A"	South Bay
9	1	3	Schedules under Must-run "A"	Combustion Turbines
9	2		Must-run Agreement "B"	
9	2	1	Schedules under Must-run "B"	Encina
9	2	2	Schedules under Must-run "B"	South Bay
9	2	3	Schedules under Must-run "B"	Combustion Turbines
9	3		Must-run Agreement "C"	
9	3	1	Schedules under Must-run "C"	Encina
9	3	2	Schedules under Must-run "C"	South Bay
9	3	3	Schedules under Must-run "C"	Combustion Turbines

* These designations indicate a supplement to the supplement of a rate schedule.

Southern California Edison Company
Docket No. ER98-441-000

Rate Schedule	Supplement No.	Secondary Supplement No.*	Description	Plant or Unit Name (If Applicable)
<u>FERC No.</u>	<u>No.</u>	<u>No.*</u>		
10			Master Must-run Agreement	Alamitos
10	1		Must-run Agreement "A"	Alamitos
10	1	1	Schedules under Must-run "A"	Alamitos
10	2		Must-run Agreement "B"	Alamitos
10	2	1	Schedules under Must-run "B"	Alamitos
10	3		Must-run Agreement "C"	Alamitos
10	3	1	Schedules under Must-run "C"	Alamitos
10	4		Transfer Between Agreements	Alamitos
11			Master Must-run Agreement	El Segundo
11	1		Must-run Agreement "A"	El Segundo
11	1	1	Schedules under Must-run "A"	El Segundo
11	2		Must-run Agreement "B"	El Segundo
11	2	1	Schedules under Must-run "B"	El Segundo
11	3		Must-run Agreement "C"	El Segundo
11	3	1	Schedules under Must-run "C"	El Segundo
11	4		Transfer Between Agreements	El Segundo
12			Master Must-run Agreement	Etiwanda
12	1		Must-run Agreement "A"	Etiwanda
12	1	1	Schedules under Must-run "A"	Etiwanda
12	2		Must-run Agreement "B"	Etiwanda
12	2	1	Schedules under Must-run "B"	Etiwanda
12	3		Must-run Agreement "C"	Etiwanda
12	3	1	Schedules under Must-run "C"	Etiwanda
12	4		Transfer Between Agreements	Etiwanda
13			Master Must-run Agreement	Huntington Beach
13	1		Must-run Agreement "A"	Huntington Beach
13	1	1	Schedules under Must-run "A"	Huntington Beach
13	2		Must-run Agreement "B"	Huntington Beach
13	2	1	Schedules under Must-run "B"	Huntington Beach
13	3		Must-run Agreement "C"	Huntington Beach
13	3	1	Schedules under Must-run "C"	Huntington Beach
13	4		Transfer Between Agreements	Huntington Beach
14			Master Must-run Agreement	Mandalay

* These designations indicate a supplement to the supplement of a rate schedule.

14	1		Must-run Agreement "A"	Mandalay
14	1	1	Schedules under Must-run "A"	Mandalay

California Independent System Operator Corporation

Rate Schedule Designations

Effective Date: January 1, 1998

Southern California Edison Company

Docket No. ER98-441-000

<u>Rate</u> <u>Schedule</u> <u>FERC No.</u>	<u>Supplement</u> <u>No.</u>	<u>Secondary</u> <u>Supplement</u> <u>No.*</u>	<u>Description</u>	<u>Plant or Unit Name</u> <u>(If Applicable)</u>
14	2		Must-run Agreement "B"	Mandalay
14	2	1	Schedules under Must-run "B"	Mandalay
14	3		Must-run Agreement "C"	Mandalay
14	3	1	Schedules under Must-run "C"	Mandalay
15	4		Transfer Between Agreements	Mandalay
15			Master Must-run Agreement	Redondo
15	1		Must-run Agreement "A"	Redondo
15	1	1	Schedules under Must-run "A"	Redondo
15	2		Must-run Agreement "B"	Redondo
15	2	1	Schedules under Must-run "B"	Redondo
15	3		Must-run Agreement "C"	Redondo
15	3	1	Schedules under Must-run "C"	Redondo
15	4		Transfer Between Agreements	Redondo

* These designations indicate a supplement to the supplement of a rate schedule.